

Bruce R. Garner #4322
Assistant Attorney General
Attorney for UDOT
4501 South 2700 West
Salt Lake City, Utah 84119-5998
Telephone (801) 965-4168
Fax (801) 965-4338

FILED

FEB 26 2007

SECRETARY, BOARD OF
OIL, GAS & MINING

Request for Approval
Of a UDOT Reclamation
Contract Agreement

MEMORANDUM OF LAW AND FACTS
in SUPPORT OF DOGM'S and UDOT'S
JOINT MOTION for DEVIATION from
RULES

Docket No. 2007-005
Cause No. M/011/0003
Case No.

This MEMORANDUM is filed in support of DOGM's and UDOT'S Joint Motion to allow a deviation from the Board's normal rules.

FACTUAL BACKGROUND

1. DOGM and UDOT have entered into a written contractual agreement allowing UDOT to provide a self-bonding surety for its mining operations on the Beck Street Quarry.
2. UDOT is also filing a PETITION for APPROVAL with the Board to have the surety agreement approved.
3. Normally, the Board would require a Petitioner to submit a matter to the Board by the 10th of each month, in order for the Petition to appear on the following month's agenda. *See, Rule 641-105-100.*
4. Where a Petition is filed after the 10th of the month, it may be considered by the Board during the following month "only upon separate motion of petitioner made at or before the hearing for good cause shown." *See, Rule 641-105-100.*

5. UDOT did not file the Petition by the 10th of February, but for good cause asks the Board to place the Petition on its March 28, 2007 meeting agenda.

6. Time is of the essence. UDOT has immediate need for the use of the mined materials and faces increasing costs while necessary approvals are obtained.

7. The public interest is served by UDOT and DOGM acting together to reduce or avoid increasing costs while working within the appropriate legal framework to obtain Board approvals.

RULE PERMITTING DEVIATION

Rule 641-100-400 provides: "When good cause appears, the Board may permit a deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary or in the furtherance of justice or the statutory purposes of the Board. Notwithstanding this, in no event may the Board permit a deviation from a rule when such rule is mandated by law."

ARGUMENT FOR DEVIATION

Utah allows the Board to deviate from its normal procedural practices where good cause appears, insofar as the Board determines that strict compliance is "impractical or unnecessary" or the deviation is "in the furtherance of justice or the statutory purposes of the Board." R641-100-400.

In this instance, an appropriate reclamation plan for the Beck Street Quarry has been agreed upon by DOGM and UDOT. This agreement is a statutorily approved tool fulfilling the legislative intent that mined land "be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for